

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:17-CV-411-D

BERTMAN WHERRY,)
)
 Plaintiff,)
)
 v.)
)
 FMC-NEW HOPE, FMC-RALEIGH)
 DIALYSIS CENTER, DAVITA WAKE)
 FOREST DIALYSIS CENTER, and)
 ATANA COLLINS,)
)
 Defendants.)

ORDER

On August 11, 2017, Bertman Wherry (“Wherry”), appearing pro se, filed a motion to proceed in forma pauperis under 28 U.S.C. § 1915 [D.E. 1]. On August 22, 2017, the court referred the motion to Magistrate Judge Swank for frivolity review [D.E. 5]. On October 31, 2017, Magistrate Judge Swank issued a Memorandum and Recommendation (“M&R”) [D.E. 6] and recommended that Wherry’s application to proceed in forma pauperis be granted and that the complaint be dismissed as frivolous. Wherry did not respond to the M&R.

“The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); see 28 U.S.C. § 636(b). Absent a timely objection, “a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond, 416 F.3d at 315 (quotation omitted).

The court has reviewed the M&R and the record. The court is satisfied that there is no clear error on the face of the record and adopts the conclusions in the M&R.

In sum, Wherry's application to proceed in forma pauperis [D.E. 1] is GRANTED, and Wherry's complaint is DISMISSED as frivolous. The clerk shall close the case.

SO ORDERED. This 19 day of January 2018.



JAMES C. DEVER III
Chief United States District Judge